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Attorneys for Defendants
Netflix, Inc., and
Netflix Worldwide Entertainment, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FIONA HARVEY,

Plaintiff,

v.

NETFLIX, INC., and NETFLIX
WORLDWIDE ENTERTAINMENT,
LLC,

Defendants.

Case No. 2:24-cv-04744-RGK-AJR

**DEFENDANTS' NOTICE OF MOTION
TO DISMISS COMPLAINT**

Date: September 3, 2024
Time: 9:00 a.m.
Place: Courtroom 850

Hon. R. Gary Klausner

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on September 3, 2024 at 9:00 a.m., or as soon thereafter as the matter may be heard by the Honorable R. Gary Klausner, in the United States District Court for the Central District of California located at 255 East Temple Street, Los Angeles, CA 90012, Courtroom 850, defendants Netflix, Inc., and Netflix Worldwide Entertainment, LLC (collectively, “Netflix”), by and through their undersigned counsel, will and hereby do, move the Court pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss with prejudice the Complaint filed by plaintiff Fiona Harvey (“Harvey”) (ECF No. 1).

This motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6), on the ground that Harvey has failed to adequately allege her claims.

Specifically, Harvey’s defamation claim fails because (1) she fails to adequately allege that *Baby Reindeer* (the “Series”) makes any provably false statement of fact about her; (2) the alleged defamatory statements constitute legally protected opinion; (3) Harvey is a libel-proof plaintiff; and (4) Harvey fails to allege actual malice.

Harvey’s other claims for intentional infliction of emotional distress (“IIED”), negligence, gross negligence, and right of publicity should be dismissed as duplicative of her defamation claim, as they are based on the same allegations. Still, each claim also fails on the merits.

Harvey fails to allege IIED because she does not adequately allege that Netflix engaged in outrageous conduct nor that such conduct was the cause of her supposed emotional distress.

Harvey fails to allege negligence and gross negligence because she does not sufficiently allege any element of negligence. Fatally, there is no legal duty to support her negligence-based claims, as the Series is an expressive work.

Harvey also fails to allege a violation of her right of publicity. First, the First Amendment prevents her from maintaining a right of publicity cause of action

1 premised on an expressive work such as the Series. Second, Harvey does not
2 adequately allege (1) knowing use by Netflix of her likeness, or (2) a direct
3 connection between that alleged use and the commercial purpose of creating the
4 Series.

5 Finally, Harvey fails to allege punitive damages with respect to her
6 defamation, IIED, gross negligence, and right of publicity claims because she has
7 not pleaded oppression, fraud, or malice with the requisite specificity.

8 This motion is based on this Notice, the accompanying Memorandum of
9 Points and Authorities, the Declaration of Marvin S. Putnam, Netflix's Request for
10 Judicial Notice in support of Netflix's Motion to Dismiss, all pleadings on file in
11 this action, and such oral argument as may be presented on this motion.

12 This motion is made following the conference of counsel pursuant to Local
13 Rule 7-3, which took place on July 11, 2024. Counsel for the parties were unable to
14 reach a resolution that would have made this motion unnecessary.

15 Dated: July 29, 2024

Respectfully submitted,

16 LATHAM & WATKINS LLP
17 Marvin S. Putnam

18 By /s/ Marvin S. Putnam
19 Marvin S. Putnam
20 Attorneys for Defendants
21 Netflix, Inc., and Netflix Worldwide
22 Entertainment, LLC
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